

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

THE CHARLES MACHINE WORKS,	)	
INC., an Oklahoma corporation,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-04-0106-HE
	)	
VAN BUREN EQUIPMENT, INC.,	)	
a California corporation, d/b/a DITCH	)	
WITCH OF THE PACIFIC,	)	
	)	
Defendant.	)	

**ORDER**

Plaintiff The Charles Machines Works, Inc. has filed a motion for partial summary judgment seeking a decision that the Californian Equipment Dealers Act does not apply to its Dealership Agreement with defendant Van Buren Equipment, Inc., d/b/a Ditch Witch of the Pacific. The plaintiff argues that the California act, by its own terms, does not apply to “earthmoving” machines and that the machines it manufactures and sells are earthmoving machines. As the parties have not demonstrated that California law applies to the action,<sup>1</sup> the motion is premature and is **DENIED**.<sup>2</sup>


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<sup>1</sup> *The Dealership Agreement provides that it is to be construed in accordance with the laws of the State of Oklahoma.*

<sup>2</sup> *If the applicable law is disputed, the issue will be addressed in conjunction with the motions in limine and jury instructions. The parties are invited to submit briefs as to the applicable conflicts or choice of law principles not later than June 2, 2005.*

**IT IS SO ORDERED.**

Dated this 24<sup>th</sup> day of May, 2005.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE